

STATE OF HAWAII

HAWAII PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of	)	
	)	
BOARD OF REGENTS, University	)	CASE NO. RA-08-56
of Hawaii,	)	
	)	DECISION NO. 165
Petitioner.	)	
_____	)	

FINDINGS OF FACT, CONCLUSIONS  
OF LAW AND ORDER

On April 2, 1982, the Board of Regents [hereinafter referred to as BOR] filed a Petition for Clarification or Amendment of Appropriate Bargaining Unit with the Hawaii Public Employment Relations Board [hereinafter referred to as Board]. In its petition, the BOR requested that the newly created position entitled Special Assistant to the President for International Affairs at the University of Hawaii [hereinafter referred to as UH] be excluded from Unit 8 (Personnel of the University of Hawaii and the community college system, other than faculty) as the position is a top-level managerial position as specified in Subsection 89-6(c), Hawaii Revised Statutes [hereinafter referred to as HRS].

By letter, dated June 22, 1982, a revised description for the subject position was transmitted to the Board by David K. Luke, Jr., Director of Personnel, UH. The revised position description has been designated as Petitioner's Exhibit D and is included in the record for the instant case.

Based on the affidavit of Harold S. Masumoto, Vice President for Administration, UH, and the evidence

submitted in support of the petition, the Board makes the following findings of fact, conclusions of law and order.

#### FINDINGS OF FACT

The BOR is the public employer, as defined in Subsection 89-2(9), HRS, of employees of the UH, which includes employees in Unit 8.

The Hawaii Government Employees' Association [hereinafter referred to as HGEA] is the certified exclusive representative of employees in Unit 8.

The HGEA concurs with the BOR's proposed exclusion of the subject position from Unit 8 and is deemed to have waived the right to a hearing thereon. Petitioner's Exhibit C.

The position will be located in the Office of the President and will serve as one of two assistants to the President of the UH with primary involvement in international education. Petitioner's Exhibit D.

The position's duties and responsibilities include:

(1) Serving as the President's assistant and advisor in the formulation and review of policies and procedures affecting international education;

(2) Recommending policies and procedures for the development of programs for study abroad, desirable bilateral arrangements with foreign universities and appropriate financial support for international programs;

(3) Recommending policy on international training programs including the types of programs and funding sources; and

(4) Working on special programs and projects such as the development of policy on public affairs and programs on internal communication, campus visitations, social functions, community advisory groups and media relations. Petitioner's Exhibit D.

Based on these duties and responsibilities, the position was classified within the UH's Administrative/Managerial classification plan. Petitioner's Exhibit D.

#### CONCLUSIONS OF LAW

As the instant case involves a newly established position, the Board must first determine the appropriate bargaining unit and thereafter determine whether the position should be excluded from the bargaining unit.

Subsection 89-6(a), HRS, establishes the 13 public employee bargaining units and provides in part:

(a) All employees throughout the State within any of the following categories shall constitute an appropriate bargaining unit:

\* \* \*

(8) Personnel of the University of Hawaii and the community college system, other than faculty; . . .

In its attempt to more specifically determine the composition of Unit 8, the Board noted in Decision No. 25, Hawaii Federation of College Teachers, 1 HPERB 289 (1973):

The personnel employed by the University range over a broad spectrum of occupational groupings and includes some hybrids. There are a number of personnel in the University System who do not appropriately fall within the faculty or civil service groupings. Some of the personnel who are not within the faculty or civil service systems are classified as Administrative, Professional and Technical Personnel (hereafter APT).



APT's generally perform professional level duties which may be unique to the University environment. . . Id. at 298.

The Board thereafter determined that the following employees are to be included in Unit 8:

All administrative, technical and professional employees who are employed half time or more, except those determined to be excluded. Id. at 290.

After reviewing the evidence submitted by the BOR, the Board concludes that the duties of the subject position reflect administrative and professional responsibilities within the UH system. Thus, as the position was classified as an Administrative/Managerial Position and no evidence was submitted which would indicate that the position should be classified in a faculty or civil service grouping, the position would appropriately be placed in Unit 8 if included in collective bargaining.

Subsection 89-6(c), HRS, specifies which positions are to be excluded from an appropriate bargaining unit and are not entitled to coverage under Chapter 89, HRS. The subsection provides in part:

No. . . top-level managerial and administrative personnel. . . shall be included in any appropriate bargaining unit or entitled to coverage under this chapter.

In interpreting the exclusionary language of Subsection 89-6(c), HRS, the Board, in various decisions, established criteria which must be met in order to justify an exclusion. In determining whether an individual occupies a top-level managerial or administrative position, the Board in Decision No. 75, Hawaii Nurses Association, 1 HPERB 660 (1977), stated, in pertinent part:

This Board believes that the proper test of whether an individual occupies a top-level managerial and administrative position includes measuring the duties of the position against the following criteria:

1. The level at and extent to which the individual exercises authority and judgment to direct employees, determine methods, means and personnel by which the employer's operations are to be carried out; or

2. The extent to which the individual determines, formulates and effectuates his employer's policies. Id. at 666. [footnotes omitted]

In Decision No. 95, Hawaii Government Employees' Association, 2 HPERB 105 (1978), the Board supplemented this criteria by stating:

In order to be determined to be a top-level management or administrative position, a position must:

(1) be at or near the top of an ongoing complex agency or major program and formulate or determine policy for that agency or program; or

(2) direct the work of a major program or an agency or a major subdivision thereof with considerable discretion to determine the means, methods and personnel by which the agency or program policy is to be carried out; or

(3) operate in a management capacity in a geographically separated location, such as a Neighbor Island, and be responsible for representing management in dealing with a significant number of employees. Id. at 143.

After a complete review of the duties and responsibilities to be performed by the position of Special Assistant to the President for International Affairs, the Board concludes that the position is located in the Office of the President and advises the President in the formulation and review of policies and procedures affecting


international education. As the position is at or near the top of a program which is considered major in terms of importance to the UH, the Board concludes that it is a top-level managerial and administrative position. Thus, the position should be, under the provisions of Subsection 89-6(c), HRS, and previous Board decisions, excluded from Unit 8 and coverage under Chapter 89, HRS.


ORDER

The newly created position of Special Assistant to the President for International Affairs is excluded from Unit 8.

DATED: Honolulu, Hawaii, August 19, 1982.

HAWAII PUBLIC EMPLOYMENT RELATIONS BOARD

  
MACK H. HAMADA, Chairperson

  
JAMES K. CLARK, Board Member

  
JAMES R. CARRAS, Board Member

Copies sent to:

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State Archives